

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1031 of 1998

in

SPECIAL CIVIL APPLICATION No 5096 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon,ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PARMAR GITABEN MAFALAL

Versus

SECRETARY

Appearance:

MR SV PARMAR for Appellant

Mr. S.N.Shelat, Addl.A.G.for the respondent

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 25/06/1999 & 2.7.1999

ORAL JUDGEMENT(Per:Thakker.J)

This appeal is filed against dismissal of SCA

No.5096 of 1998 by the learned single Judge on July 27,1998.

1. The appellant was the original petitioner. As stated in the petition, after the selection process, she was declared as qualified for the post of Gujarat Stenographer Gr.II on February 18,1991. But thereafter she was appointed as Gujarat Stenographer Gr.III from 28.2.1991 . As stated by the learned single Judge in the judgment impugned in the present LPA, the petitioner-appellant has worked with the respondent as under:

1. 20.2.1991 to 19.9.1991 Stenographer Grade III
2. 18.10.1991 to 17.1.1992 -do-
3. 27.1. 1992 to 26.4.1992 -do-
4. 1.5.1992 to 2.11.1992 Stenographer Grade II
5. 3.11.1992 to 5.6.1995 Stenographer Grade II
6. 6.6.1995 to 27.7.1995 Stenographer Grade III

Thereafter from July 1995 onwards, the appellant was not appointed . Only on 25.6.1998, she was appointed and that order is on record at Annexure-H to the petition. True translated version is placed on record in which it was stated that she was appointed on purely temporary basis for a period for which the Legislative Assembly was in session in the pay scale of Rs.4000-100-6000. Her appointment was on a temporary post on condition that the said appointment would be continued till the second session of the Gujarat Legislative Assembly and that she was liable to be relieved at any time even before that period without prior notice. Apprehending termination, the petitioner approached this Court by filing the above petition.

2. When the petition was heard, it was contended before the learned single Judge by the learned advocate that she was in service from February 19,1991 and there were artificial breaks and upto 1995 she was continued in service. Thereafter for about 3 years, she was not appointed but it was the case of the petitioner that it was because of ban on new recruitment. In the year 1998, she was again appointed, and therefore, there was no reason on the part of the respondent authorities not to continue her in service. It was also her case that her appointment was legal and proper inasmuch as names of qualified Stenographers were called from the Employment Exchange by the Gujarat Legislative Assembly and she had successfully passed the Stenographer's test. Her name appeared in the merit list and accordingly, she was appointed.

3. The learned single Judge, however, after considering the affidavit in reply filed by the respondent authorities observed that there were Recruitment Rules for the post of Stenographers and since the appointment of the appellant was not under those Rules her appointment could not be said to be in accordance with law and therefore, no order of regularisation could be passed in her case. The learned single Judge has also observed that after 1995, she was appointed in the year 1998 for one session of Legislative Assembly and thus the appointment was only for a short period. The learned single Judge in these circumstances dismissed the petition.

4. We have heard the learned advocate for the appellant. It was submitted that even if it can be said that an appointment can be made only in accordance with the statutory Rules, the case of the appellant ought to have been considered in its proper perspective taking into account the fact that she was an 'experienced hand' and she had worked from February 19, 1991 to September 1995 though there were some breaks. After 1995, for about three years because of ban on new recruitment, the appellant could not be appointed. Hence that factor would not come in the way of the appellant in getting regularisation.

5. Our attention was also invited to various decisions of the Supreme Court in which it was held by the Apex Court that when a person has worked for sufficiently long time, it is incumbent on the part of the authorities to consider the case of such employees for regularisation. Strong reliance was placed on *Surendra Kumar Gyani vs. State of Rajasthan*; 1992(4) SCC 464 and on *(Roshni Devi vs. State of Haryana)* (1998) 8 SCC 59. Para 15 of *Surendra Kumar Gyani* reads as under:
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" It however,, appears from the report submitted before us by the learned counsel for the State that at the present moment total number of vacancies is 191 as shown in List D and 59 employees on daily wage basis are working in terms of the interim orders passed by the Rajasthan High Court or by this Court. It, therefore, appears to us that against the available vacancies, the appellant and the petitioners in the Special Leave Petitions (Civil) Nos. 6597-6607 of 1986 deserve a sympathetic consideration for appointment since it is nobody's case that even at this time,

services of more Lower Division Clerks are not required or the appellant and these petitioners are not capable of discharging their functions as Lower Division Clerks. It has been submitted before us that persons who had been continuing in service in terms of the interim order of the Rajasthan High Court have become eligible to be considered to regularisation in terms of the Government Order passed subsequently but since the cases of the appellant and the petitioners in the special leave petitions had been decided by the Appeal Bench of Rajasthan High Court against the employees concerned they have been deprived of such consideration for regularisation. In our view, it is only just and proper if a pragmatic and sympathetic consideration is made in respect of the appellant and the other petitioners in the special leave petition so that if they have got the requisite qualifications like similarly circumstanced persons being eligible for appointment and/or regularisation they also should be considered for appointment and for regularisation against the available vacancies so that useful service rendered by them in past may get a proper recognition. It is reasonably expected that State Government should give an anxious and sympathetic consideration to the appellant and the petitioners in the special leave petitions in the matter of appointment in the available vacancies according to the seniority and the length of service rendered by such persons as daily rated Lower Division Clerks in the said State Insurance and Provident Fund Department by making appropriate provisions. With the aforesaid observations, Civil Appeal No. 833 of 1986 and Special Leave Petition Nos. 6597-6607 of 1986 and 12528 of 1986 are disposed of without any order as to costs. "

It was also submitted that till a regularly selected candidate under the Rules is available, there is no earthly reason to terminate the services of the appellant-petitioner and to that extent, the action taken by the authorities was contrary to law.

6. Mr. S.N. Shelat learned Additional Advocate General on the other hand supported the order passed by the respondent. Drawing our attention to the order of appointment of the appellant, he submitted that the order speaks for itself. It was an appointment purely of

temporary nature for one session of Gujarat Legislative Assembly. Thus, when the appellant was appointed in 1998, she was very well aware that it was for a particular period. In fact, her undertaking was also taken by the respondent that the appointment was purely temporary for one session only and that she would not claim any right on the basis of such appointment. Relying on the affidavit in reply, the learned Additional Advocate General contended that Rules are framed by the Gujarat Legislative Assembly under Article 187 of the Constitution and selection is required to be made either by promotion or by direct selection in accordance with Rule 12. The appointment of the appellant was not made in consonance with Rule 12. In these circumstances, the learned single Judge was right in not issuing a writ of mandamus directing the respondent to regularise the services of the appellant. It was however stated that as and when regular appointment will be made, cases of all eligible candidates would be considered and it is open to the appellant to compete with the other eligible candidates. Her case would also be considered along with other candidates. The order passed by the learned single Judge cannot be said to be contrary to law.

7. Our attention has also been invited by the learned counsel to various decisions cited before the learned single Judge including a decision reported in Yamani J. Dave vs. Director IUCA and Infilibent Programme & anor. (1996) 1 GLR 664.

8. Having regard to rival contention of the parties, we are of the opinion that it cannot be said that the learned single Judge has committed any error of law which requires to be corrected in exercise of appellate powers. It is not disputed that appointment to the post of Stenographer can be made in accordance with statutory Rules. It is undisputed that the appointment of the appellant was not made under those Rules. It was for a temporary measure. Between 1995 and 1998, admittedly the appellant was not in service. In 1998, when she was appointed, it was for one Session of the Legislative Assembly. The learned Single Judge was therefore, right in observing that it was for a short period but at the same time, Ms. Parmar is right in submitting that if past services of the appellant can be taken into account, it was from February 1991 to July 1995 with some break and again, in 1998, she was appointed and after one session, her services came to be terminated. Thus, it can be said that she is an experienced hand. In these circumstances as observed by the Supreme Court in Roshni Devi & ors. vs. State of Haryana & ors. (Supra) as and

when the question of regular appointment in accordance with Rules will be made, the authorities shall consider this fact along with other relevant factors.

9. For the foregoing reasons we find no legal infirmity in the order passed by the learned Single Judge. LPA deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

Direct Service.